

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Maria Barrera,
Plaintiff,

v.

**GPT GIG BOA Portfolio Owner
LLC**, a Delaware Limited Liability
Company;
**Bank of America National
Association**, a North Carolina
Corporation; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Plaintiff Maria Barrera complains of Defendants GPT GIG BOA Portfolio Owner LLC, a Delaware Limited Liability Company; Bank of America National Association, a North Carolina Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She suffers from Rheumatoid Arthritis. She uses a wheelchair for mobility.

1 2. Defendants are, or were at the time of the incidents, the real property
2 owners, business operators, lessors and/or lessees for Bank of America
3 (“Bank”) located at or about 3505 E. Imperial Hwy, Lynwood, California.

4 3. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for
10 the events herein alleged, or is a necessary party for obtaining appropriate
11 relief. Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14
15 **JURISDICTION & VENUE:**

16 4. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
18 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 5. Pursuant to pendant jurisdiction, an attendant and related cause of
20 action, arising from the same nucleus of operative facts and arising out of the
21 same transactions, is also brought under California’s Unruh Civil Rights Act,
22 and the California Disabled Persons Act, which acts expressly incorporate the
23 Americans with Disabilities Act.

24 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
25 founded on the fact that the real property which is the subject of this action is
26 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

7. The Plaintiff went to the Bank twice – once in March 2014 and once in September 2014.

8. The Bank is a facility open to the public, a place of public accommodation, and a business establishment.

9. At the bank, there are a number of service counters for surface transactions between the bank tellers and the customers. Unfortunately, there is no lowered transaction counter for use by persons with disabilities who use wheelchairs. Instead, the transaction counters are about 46 inches in height above the finish floor.

10. The plaintiff personally encountered this problem. This inaccessible transaction counter denied the plaintiff full and equal access and caused her difficulty and frustration.

11. Plaintiff would like to return and patronize the Bank but will be deterred from visiting until the defendants cure the violation. Plaintiff lives about two blocks from the Bank. The Bank is conveniently located. Plaintiff would like to return.

12. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with disabilities.

13. Given the obvious and blatant violations, the plaintiff alleges, on information and belief, that there are other violations and barriers on the site that relate to his disability. Plaintiff will amend the complaint, to provide proper notice regarding the scope of this lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless

1 of whether he personally encountered them).

2 14. Additionally, on information and belief, the plaintiff alleges that the
3 failure to remove these barriers was intentional because: (1) these particular
4 barriers are intuitive and obvious; (2) the defendants exercised control and
5 dominion over the conditions at this location and, therefore, the lack of
6 accessible facilities was not an “accident” because had the defendants
7 intended any other configuration, they had the means and ability to make the
8 change.

9
10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
11 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
12 defendants (42 U.S.C. section 12101, et seq.)

13 15. Plaintiff repleads and incorporates by reference, as if fully set forth
14 again herein, the allegations contained in all prior paragraphs of this
15 complaint.

16 16. Under the ADA, it is an act of discrimination to fail to ensure that the
17 privileges, advantages, accommodations, facilities, goods and services of any
18 place of public accommodation is offered on a full and equal basis by anyone
19 who owns, leases, or operates a place of public accommodation. See 42
20 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,
22 or procedures, when such modifications are necessary to afford
23 goods, services, facilities, privileges, advantages, or
24 accommodations to individuals with disabilities, unless the
25 accommodation would work a fundamental alteration of those
26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is
28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

1 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
2 Appendix "D."

- 3 c. A failure to make alterations in such a manner that, to the
4 maximum extent feasible, the altered portions of the facility are
5 readily accessible to and usable by individuals with disabilities,
6 including individuals who use wheelchairs or to ensure that, to
7 the maximum extent feasible, the path of travel to the altered
8 area and the bathrooms, telephones, and drinking fountains
9 serving the altered area, are readily accessible to and usable by
10 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

11 17. Pursuant to section 7.2 of the ADAAG, in areas used for transactions
12 that may not have a cash register but at which goods or services are sold or
13 distributed including, but not limited to, ticketing counters, teller stations,
14 registration counters in transient lodging facilities, information counters, box
15 office counters and library check-out areas, either:

16 (i) a portion of the main counter which is a minimum of 36 inches in
17 length shall be provided with a maximum height of 36 inches; or

18 (ii) an auxiliary counter with a maximum height of 36 inches in close
19 proximity to the main counter shall be provided; or

20 (iii) equivalent facilitation shall be provided (e.g., at a hotel registration
21 counter, equivalent facilitation might consist of: (1) provision of a folding
22 shelf attached to the main counter on which an individual with a disability
23 can write, and (2) use of the space on the side of the counter or at the
24 concierge desk, for handing materials back and forth).

25 18. In our case, the defendants failed to provide a lowered transaction
26 counter for plaintiff to use for her banking transaction.

27 19. A public accommodation must maintain in operable working condition
28 those features of its facilities and equipment that are required to be readily

1 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

2 20. Here, the failure to ensure that the accessible facilities were available
3 and ready to be used by the plaintiff is a violation of the law.

4 21. Given its location and options, the Bank is a business that the plaintiff
5 will continue to desire to patronize but she has been and will continue to be
6 discriminated against due to the lack of accessible facilities and, therefore,
7 seeks injunctive relief to remove the barriers.

8
9 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
10 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
11 51-53)

12 22. Plaintiff repleads and incorporates by reference, as if fully set forth
13 again herein, the allegations contained in all prior paragraphs of this
14 complaint.

15 23. Because the defendants violated the plaintiffs' rights under the ADA,
16 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
17 Code § 51(f), 52(a).)

18 24. Because the violation of the Unruh Civil Rights Act resulted in
19 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
20 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
21 55.56(a)-(c).)

22
23 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
24 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
25 defendants) (Cal Civ. § 54-54.8)

26 25. Plaintiff repleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 26. Because the defendants violated the plaintiff's rights under the ADA,
2 they also violated the Disabled Persons Act and are liable for damages. (Civ.
3 Code § 54.1(d), 54.3(a).)

4 27. Because the violation of the Disabled Persons Act resulted in difficulty,
5 discomfort or embarrassment for the plaintiffs, the defendants are also each
6 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
7 (c).)

8
9 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
10 and against all defendants)

11 28. Plaintiff repleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint.

14 29. The Defendants had a general duty and a duty arising under the
15 Americans with Disabilities Act and the Unruh Civil Rights Act and
16 California Disabled Persons Act to provide safe, convenient, and accessible
17 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
18 paragraphs, has caused injury and damage as alleged above.

19
20 **PRAYER:**

21 Wherefore, Plaintiff prays that this court award damages and provide
22 relief as follows:

23 1. For injunctive relief, compelling defendants to comply with the
24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
25 Plaintiffs are not invoking section 55 of the California Civil Code and is not
26 seeking injunctive relief under the Disabled Persons Act at all.

27 2. Damages under the Unruh Civil Rights Act and/or the California
28 Disabled Persons Act which damages provide for actual damages and a

1 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
2 acts, simultaneously, and an election will be made prior to or at trial.

3 3. Reasonable attorney fees, litigation expenses and costs of suit,
4 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

5
6 Dated: January 15, 2015

CENTER FOR DISABILITY ACCESS

7
8 By: 
9 Mark Potter, Esq.
Attorneys for Plaintiff